

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

**DIGITAL TELEPORT, INC.
OCN# 7102**

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File No. EB-01-IH-0017f
NAL/Acct. No. 200132080037
FRN 0005-6540-09

FORFEITURE ORDER

Adopted: June 7, 2002

Released: June 11, 2002

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order, we issue a monetary forfeiture against Digital Teleport, Inc. ("Digital Teleport") for willful violation of 47 C.F.R. § 52.15(f). The noted violation involves Digital Teleport's failure to report its number utilization and forecast data. Based upon our review of the facts and circumstances of this case, including Digital Teleport's response to our *Notice of Apparent Liability* ("NAL"),¹ we conclude that Digital Teleport has justified a reduction of the proposed forfeiture and that it is liable for a forfeiture in the amount of \$4,800.

II. BACKGROUND

2. On April 24, 2001, the Chief, Enforcement Bureau, acting pursuant to delegated authority, issued the *NAL* to Digital Teleport, proposing a \$6,000 forfeiture. We issued the *NAL* because it appeared that Digital Teleport had failed to report on its actual and forecast number usage by filing FCC Form 502, the North American Numbering Plan Numbering Resource Utilization/Forecast ("NRUF") Report that was due on September 15, 2000.² Carriers are required to file NRUF reports for each separate legal entity represented by an Operating Company Number ("OCN").³ It appeared that Digital Teleport failed to file an NRUF report for one OCN, which was referenced in our *NAL*. We therefore determined that Digital Teleport had apparently violated section 52.15(f) of the Commission's rules, which requires U.S. carriers receiving numbering resources from the North American Numbering Plan Administrator ("NANPA"), a Pooling Administrator, or another telecommunications carrier, to report semiannually on

¹ See *Digital Teleport, Inc.*, 16 FCC Rcd 8610 (EB 2001).

² The NRUF reports are due on or before February 1 and on or before August 1 of each year. See 47 C.F.R. § 52.15(f)(6). However, we note that the deadline for filing reports due August 1, 2000 was extended to September 15, 2000. *Numbering Resource Optimization*, CC Docket No. 99-200, 15 FCC Rcd 17005 (2000).

³ See 47 C.F.R. § 52.15(f)(3)(ii).

their actual and forecast number usage.⁴

3. Digital Teleport responded to the *NAL*, and requests cancellation or reduction of the forfeiture. Digital Teleport does not contest the finding that it failed to comply with the reporting requirements of section 52.15(f). However, Digital Teleport asserts that the Bureau's method for determining the forfeiture amount is flawed. Additionally, Digital Teleport argues that there are mitigating circumstances that justify reduction of the forfeiture amount. In this regard, Digital Teleport specifically asserts that it has a history of past compliance with the Commission's rules.

III. DISCUSSION

4. The *NAL* explicitly states that the proposed forfeiture was assessed in accordance with applicable statutory provisions, the Commission's rules and the Commission's *Forfeiture Guidelines*.⁵ Section 503(b) of the Act requires that, in examining Digital Teleport's response, we take into account the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁶ Although Digital Teleport has not justified cancellation of the forfeiture, we find that a reduction of the forfeiture amount is warranted.

5. Digital Teleport asserts that the *Forfeiture Guidelines* establish a base amount of \$3,000 for failure to file required forms, but that we consistently assessed forfeitures of at least \$6,000 for failure to file an NRUF report. Digital Teleport bases this assertion on review of a number of *NALs* contemporaneously issued to other carriers, proposing forfeitures for failure to file the September 15, 2000 NRUF report. Digital Teleport argues that the *Forfeiture Guidelines* require that we assess a forfeiture in the \$3,000 base amount. We disagree.

6. Our *NAL* emphasized the critical importance of consistent and accurate reporting of number utilization and forecast data.⁷ The *NAL* explained that we imposed an upward adjustment based upon the potential harm to the Commission's numbering administration and optimization caused by non-compliance with section 52.15(f). The amount of the upward adjustment took into account Digital Teleport's inventory of numbering resources.⁸ Under Section 503(b)(2)(D) of the Act and the *Forfeiture Guidelines*, the Bureau has broad flexibility to determine the appropriate forfeiture.⁹ In this regard, the

⁴ *Numbering Resource Optimization*, Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 99-200, 15 FCC Rcd 7574 (2000) ("*NRO Order*"); *recon. and clarification in part*, Second Report and Order, Order on Reconsideration in CC Docket 99-98 and CC Docket 99-200, and Second Further Notice of Proposed Rulemaking in CC Docket 99-200, 16 FCC Rcd 306 (2000) ("*NRO Recon. Order*").

⁵ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80; *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Guidelines*") (codified at 47 C.F.R. § 1.80(b)(4) Note).

⁶ 47 C.F.R. § 503(b)(2)(D).

⁷ *Id.*

⁸ *Digital Teleport*, 16 FCC Rcd at 8612.

⁹ 47 U.S.C. § 503(b)(2)(D). See *Forfeiture Guidelines*, 12 FCC Rcd at 17100 (1997). See, e.g., *SBC Communications Inc.*, 16 FCC Rcd 12306 (2001).

upward adjustment creates an incentive for carriers to report on their number utilization and forecast data in addition to recognizing the potential harm to numbering administration and optimization when carriers do not comply with section 52.15(f).¹⁰ Thus, we find that the calculation of the forfeiture penalty is reasonable and appropriate.

7. Digital Teleport also presents other factors in support of its argument that a reduction of the forfeiture amount is justified. Digital Teleport contends that its failure to comply with a new filing requirement mitigates its degree of culpability. Digital Teleport points out that the September 15, 2000 NRUF report was the first report required under section 52.15(f), but that the *NAL* cites *Southern California Broadcasting Company*, a case which involved repeated violations of a rule in effect for ten years. However, we cited *Southern California Broadcasting* only in order to define the term “willful” as used in the Act. Digital Teleport does not dispute that its actions were willful, and we reject its argument that the forfeiture amount should be reduced based on the recent adoption of the section 52.15 reporting requirements. As explained above, our *NAL* emphasized the critical importance of consistent and accurate reporting of number utilization and forecast data, and we find no reason to reduce the forfeiture penalty because this was the first reporting period.¹¹ Digital Teleport’s argument that the NRUF filing deadline occurred during a period when its regulatory functions were being transitioned also does not justify a reduction.

8. However, we have verified Digital Teleport’s claim that it has an overall history of compliance with the Commission’s rules, which warrants reduction of the forfeiture amount.¹² We have reviewed Digital Teleport’s response in light of the statutory factors set forth above, and conclude that Digital Teleport has not justified cancellation of the proposed forfeiture but that its overall record justifies a reduction of the forfeiture from \$6,000 to \$4,800.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to 47 U.S.C. § 503(b), and 47 C.F.R. § 0.111, 0.311 and 1.80, that Digital Teleport, Inc. FORFEIT to the United States the sum of four thousand eight hundred dollars (\$4,800) for willfully violating the Commission’s rules that require U.S. carriers to report actual and forecast number usage.

10. Payment of the forfeiture may be made by mailing a check or money order, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482, within 30 days of the release of this Forfeiture Order.¹³ The payment MUST INCLUDE the FCC Registration Number (FRN) referenced above and should note the NAL/Acct. No. referenced above. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to 47 U.S.C. § 504. A request for payment of the full amount of this Forfeiture Order under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street,

¹⁰ See 47 C.F.R. § 1.80(b)(4) Note.

¹¹ *Id.*

¹² See, e.g., *Page-Comm*, 16 FCC Rcd 6842 (EB 2001).

¹³ See 47 C.F.R. § 1.80(h).

S.W., Washington, D.C. 20554.¹⁴

11. IT IS FURTHER ORDERED that a copy of this Forfeiture Order shall be sent by Certified Mail/Return Receipt Requested, to Mark Schroeder, Vice President, Digital Teleport, Inc., and Eric Carter, Legal Counsel, Digital Teleport, Inc., 10740 Knall, Suite 230, Overland Park, Kansas 66211, and to its counsel, Russell M. Blau and Ronald W. Del Sesto, Jr., Swidler Berlin Shereff Friedman, LLP, 3000 K Street, N.W., Suite 300, Washington, DC 20007-5116.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹⁴ See 47 C.F.R. § 1.1914.